QUESTION PRESENTED

Whether a bill becomes a law without the signature of the President where, on the tenth day after the presentation of such bill to the President, he is prevented from returning it, together with his objections, to the House of Congress in which the bill originated, because that House has adjourned.

CONSTITUTIONAL PROVISIONS INVOLVED

The applicable portions of the Constitution are set forth in the Appendix, *infra*, pp. 7–8.

STATEMENT

The facts as disclosed by the record (R. 1–4) may be summarized as follows:

On Friday, April 24, 1936, Senate Bill 713, which originated in the Senate (R. 3), and which authorized the Court of Claims to reopen and rehear a claim of the petitioner which had theretofore been decided against him (R. 3, 4), was presented to the President of the United States (R. 1). On Monday, May 4, 1936, the Senate took a recess until noon Thursday, May 7, 1936, the House of Representatives remaining in session (R. 1).

While the Senate was in recess, the President returned the bill, S. 713, together with a message dated May 5, 1936, addressed to the Senate, setting forth his objections to the bill. The bill and the message were delivered to the Secretary of the Senate (R. 2). When the Senate reconvened on May 7, 1936, the Secretary thereof, by letter, advised it

of the return of the bill and of the delivery of the message of the President (R. 2). Thereupon the bill, together with the President's message, was referred to the Committee on Claims of the Senate (R. 3). No further action was taken thereafter (R. 3).

On September 14, 1936, the petitioner filed a petition in the Court of Claims to reinstate, reopen, rehear, and adjudicate his claim which had theretofore been dismissed. *Wright* v. *United States,* 60 C. Cls. 519. The United States opposed this petition on the ground that Senate Bill 713 had never become a law (R. 5, 6). The court below overruled the petition on February 8, 1937 (R. 6).

ARGUMENT

Article I, Section 7, Clause 2 of the Constitution (*infra,* p. 7) provides in part:

> If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

It is agreed that the Senate, the House of Congress in which the bill originated, had taken a recess or had adjourned on the tenth day (Sundays excepted) after the bill had been presented to the President, and that, by its action, it had prevented

the President from returning the bill to it, together with his objections thereto, on that day.

The word "adjournment", as used in the Constitution, is not limited to final adjournment. Each House adjourns from day to day, but neither House may without the consent of the other "adjourn" for more than three days. Article 1, Section 5, Constitution. The Houses of Congress receive messages from the President only while they are in session. See Senate Standing Rule XXVIII, Clause 1, House Rule XL; Hind's Prec. of H. of R. ch. CXXXVIII, Sec. 6591, p. 812; 1 Curtis, Constitutional History of the United States, p. 486.

The petitioner urges that the bill became a law on the theory, apparently, that the President acts at his own risk in taking the full ten days given him by the Constitution in considering a bill of Congress. The petitioner also contends that this Court in *The Pocket Veto Case,* 279 U. S. 655, held that the House of Congress in which a bill originated must be in session at the time the veto is returned thereto, and that the action of the President in the instant case of delivering the bill, together with the objections thereto, to the Secretary of the Senate, did not constitute a return in the manner provided by the Constitution. We do not believe, however, that the determination of the instant case depends upon that part of the opinion, for this Court also held in that case that the power conferred upon the President can not be narrowed

or cut down by Congress, or the time within which it is to be exercised lessened directly or indirectly. It was stated (pp. 680–681):

> 4. We think that under the constitutional provision the determinative question in reference to an "adjournment" is not whether it is a final adjournment of Congress or an interim adjournment, such as an adjournment of the first session, but whether it is one that "prevents" the President from returning the bill to the House in which it originated within the time allowed. It is clear, and, as we understand, is not questioned, that since the President may return a bill at any time within the alloted period, he is prevented from returning it, within the meaning of the constitutional provision, if by reason of the adjournment it is impossible for him to return it to the House in which it originated on the last day of that period.

Edwards v. *United States,* 286 U. S. 482, 486, and *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423, 454–455, hold to the same effect. We submit, therefore, that, the return of Senate Bill 713 having been prevented by the action of the Senate, it automatically failed to become a law in the absence of the President's signature.

Executive interpretations to the contrary, set forth in the petitioner's brief, are not persuasive. They occurred during the administration of President Cleveland and President Wilson. The deci-

sion of this Court in *The Pocket Veto Case, supra,* clearly demonstrated the incorrectness of these interpretations, if such they were.

Finally, we submit that were the interpretation contended for by the petitioner accepted, it might seriously prejudice the President's veto power. It is apparent that by means of the day to day, or three-day recesses, or "adjournments" contemplated by Clauses 1 and 4, Section 5, Article 1 of the Constitution, a branch of the Congress could effectively nullify the President's veto power in many instances.

CONCLUSION

We respectfully submit that the decision of the court below is correct. There exists no conflict. The petition for a writ of certiorari should, therefore, be denied.

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MAY 1937.

APPENDIX

Section 5, Article I of the Constitution of the United States (U. S. C. A., Constitution, Part I, p. 31), provides:

> SEC. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.
>
> Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.
>
> Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.
>
> Neither House, during the Session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Clause 2, Section 7, Article I of the Constitution of the United States (U. S. C. A., Constitution, Part 1, p. 32), provides:

> Every Bill which shall have passed the House of Representatives and the Senate,

shall, before it becomes a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

U. S. GOVERNMENT PRINTING OFFICE: 1937